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STATEMENT AS TO JURISDICTION ON APPEAL

Filed June 19, 1937

In the Supreme Court of the United States

OCTOBER TERM, 1937

No. —

UNITED STATES OF AMERICA, ET AL.

v.

HUMBLE OIL & REFINING COMPANY

UNITED STATES OF AMERICA, ET AL.

v.

MAGNOLIA PETROLEUM COMPANY

UNITED STATES OF AMERICA, ET AL.

v.

THE TEXAS COMPANY

UNITED STATES OF AMERICA, ET AL.

v.

GULF REFINING COMPANY

UNITED STATES OF AMERICA, ET AL.

v.

THE TEXAS COMPANY

24475—37——1

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF TEXAS

STATEMENT AS TO JURISDICTION ON APPEAL

In compliance with Rule 12 of the Rules of the Supreme Court, appellants submit herewith their statement showing the basis of the jurisdiction of the Supreme Court of the above-entitled cases on appeal.

STATUTES

Section 5 of the Commerce Court Act (c. 309, 36 Stat. 539; U. S. Code, Suppl. III, Tit. 28, Sec. 45a).

Section 238 of the Judicial Code as amended by the Act of February 13, 1925 (c. 229, 43 Stat. 936, par. (4); U. S. Code, Tit. 28, Sec. 345).

Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 210, 219; U. S. Code, Tit. 28, Sec. 45 and 47a, Suppl. III).

DECREES

The decrees sought to be reviewed were entered May 1, 1937.

The petition for appeal was filed and the order allowing the appeal was entered June 19, 1937.

THE NATURE OF THE CASES AND RULINGS BELOW

These suits were brought by appellees to enjoin and annul five orders of the Interstate Commerce Commission entered in a proceeding, instituted by

the Commission upon its own motion, entitled *Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services.* The orders require the railroads therein named to cease paying allowances or refunds to appellees for moving or "switching" railroad cars to and from points within their inductrial plants or performing that service free or without charge in addition to their line-haul rates. The Commission first issued a general report (209 I. C. C. 11) based on the general investigation, and then issued supplemental reports dealing with the terminal practices at particular industrial plants, which supplemental reports are accompanied by orders directed against the carriers serving those particular plants. The orders attacked in the instant cases were issued in connection with the following supplemental reports:

Humble Oil & Refining Co. Terminal Allowance, 209 I. C. C. 727;

Magnolia Petroleum Company Terminal Allowance, 209 I. C. C. 93;

Texas Company Terminal Allowance at Houston, Tex., 209 I. C. C. 767;

Gulf Refining Company Terminal Allowance, 209 I. C. C. 756;

Texas Company Terminal Allowance at Port Arthur, Texas, 213 I. C. C. 583.

Cars consigned to or by appellees are delivered to and received from them by the railroads upon in-

terchange or "storage" tracks located upon and at the entrance to appellees' industrial plants. With their own locomotives, appellees then move or "switch" the cars from the interchange tracks to the particular points or "spots" within their plants when and as they require the contents of the loaded cars to be unloaded or the empty cars to be loaded at such "spots." (Such movement of cars to and from loading and unloading points within industrial plants is commonly called "car spotting.") On the theory that it is the duty of the railroads to perform this plant "spotting" service, appellees claim and receive from the railroads allowances or refunds out of the line-haul rates in amounts ranging from 90¢ to $1.00 for each loaded car so moved or switched by appellee.

Upon consideration of the physical arrangement of the several plants and all the circumstances and conditions under which the spotting service is performed at each of the plants, the Commission stated its findings and conclusions of fact, of which the following with respect to the Gulf Refining Company is illustrative:

> We find that the service performed beyond the interchange tracks described of record is a plant service; that the service for which the respondent carriers are compensated in their line-haul rates begins and ends at said interchange tracks; that the payment of an allowance for the performance of serv-

> ice beyond said interchange tracks provides the means by which the industry enjoys a preferential service not accorded to shippers generally; and that by such payment respondent carriers refund or remit a portion of the rates or charges collected or received as compensation for the interstate transportation of property in violation of section 6 (7) of the act.

The order in each case directs the carrier or carriers serving the plant of the particular appellee to cease and desist on or before a specified date and thereafter to abstain from the practices found unlawful in the accompanying supplemental report.

Hearing in the district court was had before a statutory court of three judges. Findings of fact and conclusions of law were made and a written opinion rendered. The court held in substance: (1) that the plant "spotting" service is a transportation service which the carriers are required by law to perform; (2) that the evidence does not disclose any "abnormal conditions" in appellees' plants such as physical impossibility or refusal of appellees to allow the railroads access to plants which would relieve the carriers from the duty of performing the spotting service; (3) that the Commission has power only to regulate the amount of allowances and to determine whether they result in unlawful preferences and discrimination, and that it, therefore, exceeded its power in issuing

the orders prohibiting any allowance; and (4) that the Commission did not make findings which were essential to the validity of its orders, namely, that the allowances in these cases were unreasonable, unjustly preferential, unduly discriminatory, or otherwise unlawful. The decrees annul, set aside, and permanently enjoin enforcement of the respective orders.

The questions presented are substantial. They involve not only the sufficiency of the evidence of record and the Commission's findings to support the five orders under attack, but also the very power of the Commission to prevent railroads from paying refunds or allowances to shippers for doing anything which they and the railroads choose to call "transportation" service, regardless of whether the thing done by the shippers is, in fact, a transportation service within the meaning of Section 15 (13) of the Interstate Commerce Act. The cases also involve the question whether the Commission has administrative power to determine the extent of the duty of railroads under their line-haul rates and what constitutes reasonable delivery of interstate shipments by railroad at the great industrial plants of large shippers.

CASES SUSTAINING JURISDICTION

United States v. *American Sheet & Tin Plate Co.*, — U. S. — (No. 734), decided May 17, 1937;

United States v. *Northern Pacific Ry. Co.*, 288 U. S. 490;

United States v. *Baltimore & Ohio R. R. Co.*, 293 U. S. 454;

Merchants Warehouse Co. v. *United States*, 263 U. S. 501;

Los Angeles Switching Case, 234 U. S. 294.

Appended hereto is a copy of the opinion of the three-judge District Court filed February 24, 1937.

STANLEY REED,
Solicitor General.

DOUGLAS W. MCGREGOR,
United States Attorney.

ROBERT H. JACKSON,
Assistant Attorney General.

ELMER B. COLLINS,
Special Assistant to the Attorney General.

DANIEL W. KNOWLTON,
Chief Counsel, Interstate Commerce Commission, Counsel for Appellants.

Dated June 16, 1937

In the District Court of the United States for the Eastern District of Louisiana

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In Equity No. 314 (New Orleans Division)

PAN AMERICAN PETROLEUM CORPORATION

vs.

UNITED STATES OF AMERICA ET AL.

In Equity No. 315 (New Orleans Division)

COLIN C. BELL AND WM. TRACY ALDEN, TRUSTEES OF THE ESTATE OF THE CELOTEX COMPANY,

vs.

UNITED STATES OF AMERICA ET AL.

In Equity No. 317 (New Orleans Division)

GREAT SOUTHERN LUMBER COMPANY,
BOGALUSA PAPER COMPANY, INCORPORATED,

vs.

UNITED STATES OF AMERICA ET AL.

In Equity No. 331 (Baton Rouge Division)

STANDARD OIL COMPANY OF LOUISIANA

vs.

UNITED STATES OF AMERICA ET AL.

In the District Court of the United States for the Southern District of Texas

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In Equity No. 690 (Houston Division)

HUMBLE OIL & REFINING COMPANY

vs.

UNITED STATES OF AMERICA ET AL.

In Equity No. 691 (Houston Division)

MAGNOLIA PETROLEUM COMPANY

vs.

UNITED STATES OF AMERICA ET AL.

In Equity No. 692 (Houston Division)

THE TEXAS COMPANY

vs.

UNITED STATES OF AMERICA ET AL.

In Equity No. 693 (Houston Division)

GULF REFINING COMPANY

vs.

UNITED STATES OF AMERICA ET AL.

In Equity No. 718 (Houston Division)

THE TEXAS COMPANY

vs.

UNITED STATES OF AMERICA ET AL.

Before FOSTER, Circuit Judge, and BORAH and KENNERLY, District Judges

OPINION

FEBRUARY 24, 1937.

Luther M. Walter, Nuel D. Belnap, John S. Burchmore, Walter, Burchmore & Belnap, of Chicago, Illinois, for Plaintiffs. Elmer B. Collins, Special Assistant to the Attorney General, Daniel W. Knowlton, Chief Counsel, Interstate Commerce Commission, Nelson Thomas, Attorney, Interstate Commerce Commission, for Defendants.

— February 24, 1937

KENNERLY, *District Judge:* These are suits in Equity in the District Court of the United States for the Eastern District of Louisiana (New Orleans and Baton Rouge Divisions) and for the Southern District of Texas (Houston Division) under the Act of Congress of October 22, 1913 (38 Stat. 219, Sections 41, 45, 46, and 47 of Title 28, U. S. C. A.), by the Plaintiffs (hereinafter named) against the Defendants (hereinafter named), to enjoin, restrain, and set aside Orders of the Interstate Commerce Commission requiring that the Railroad Companies named as Defendants cease, desist from, and discontinue the payment to Plaintiffs of allowances for performing certain terminal services hereinafter more fully set out and generally referred to as "spotting."

The Original Report of the Commission, on which Orders complained of are based, is reported as:

Propriety of Operating Practices, Terminal Services, 209 I. C. C. 11.

Supplemental Reports, on which Orders complained of are also based, will be found in the printed Reports of the Commission, as follows:

Mexican Petroleum Corporation of La., Inc., Terminal Allowance,[1] 209 I. C. C. 394.

Celotex Company Terminal Allowance, 209 I. C. C. 764.

Great Southern Lumber Company-Bogalusa Paper Company Terminal Allowance, 209 I. C. C. 793.

Standard Oil Company of Louisiana Terminal Allowance, 209 I. C. C. 68.

Humble Oil & Refining Co. Terminal Allowance, 209 I. C. C. 727.

Magnolia Petroleum Company Termina Allowance, 209 I. C. C. 93.

Texas Company Terminal Allowance at Houston, Tex., 209 I. C. C. 767.

Gulf Refining Company Terminal Allowance, 209 I. C. C. 757.

Texas Company Terminal Allowance at Port Arthur, Texas, 44th Supplemental Report.

There were applications for Interlocutory Injunctions which were heard by a Three-Judge-Court organized under Section 47, Title 28, U. S. C. A., and granted, and the cases have now been heard together, on one Record, on the merits by the same Court, and may be disposed of in one opinion.

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[1] Pan American Petroleum Corporation, petitioner in No. 314, In Equity, is successor to the Mexican Petroleum Corporation of Louisiana, Incorporated, in ownership an operation of Destrehan refinery.

(a) No. 314 is a suit by the Pan American Petroleum Corporation, Plaintiff, against the United States of America, The Yazoo & Mississippi Valley Railroad Company (for brevity called Y. & M. V. Ry. Co.), and the Illinois Central Railroad Company, with the Interstate Commerce Commission intervening. Plaintiff is the successor of the Mexican Petroleum Corporation of Louisiana, Incorporated (for brevity called Mexican Corporation), and owns and operates as did Mexican Corporation, at Destrehan, Louisiana, on the line of the Y. & M. V. Ry. Co. a large oil refinery plant. The plant is situated south of and adjacent to the tracks of the Y. & M. V. Ry. Co. There are within the plant enclosure, tracks which connect with the tracks of Ry. Co., and are used for the transportation of cars moving in interstate commerce between the places where they are loaded and unloaded within the enclosure of the plant and the Ry. Co.'s tracks, the service of such transportation being performed, formerly by Mexican Corporation and now by Plaintiff under a tariff promulgated by the Ry. Co., reading as follows:

"Terminal Allowances to the Mexican Petroleum Corporation of Louisiana at Destrehan, La.

"On traffic to and from points on or reached via The Yazoo and Mississippi Valley Railroad Company or connections.

"On all carload shipments (including trap cars containing 10,000 pounds or more of less-carload freight) destined to or coming from the plant of the Mexican Petroleum Corporation of Louisiana at Destrehan, La., the terminal switching service is performed by the Mexican Petroleum Cor-

poration of Louisiana for account of The Yazoo and Mississippi Valley Railroad Company. Such terminal switching service, for which this allowance is made, consists of the handling of the cars between the point of interchange of such cars with this Company and the point at which such cars are unloaded, or the point at which such cars are loaded in said plant.

"For such terminal service performed for The Yazoo and Mississippi Valley Railroad Company by the Mexican Petroleum Corporation of Louisiana, at Destrehan, La., the Mexican Petroleum Corporation of Louisiana will be allowed 90 cents per loaded car, which will include the handling of the empty cars in the reverse direction.

"This allowance is not in excess of the average actual cost of the service as disclosed in a joint study of the operations of the plant facility made during period June 4, 1929, to June 8, 1929, inclusive, also June 10, 1929, and filed with the Interstate Commerce Commission."

The cease and desist Order of the Commission of which Plaintiff complains as requiring Defendant Railroads to cease and desist making such allowance, under such Tariff, is dated June 25, 1935, and is as follows:

"Upon further consideration of the record in this proceeding concerning the lawfulness and propriety of the allowance paid by The Yazoo and Mississippi Valley Railroad Company to the Mexican Petroleum Corporation of Louisiana, Incorporated, for performance by the latter of spotting service within its plant at Destrehan, La., and the Commission having under date of May 14, 1934, made and

filed a report Propriety of Operating Practices—Terminal Services, 209 I. C. C. 11, containing its legal conclusions with respect to the general situation presented, and the division having on the date hereof made and filed a supplemental report containing its findings of fact and conclusions with respect to the allowance paid to the Mexican Petroleum Corporation of Louisiana, Incorporated, which reports are hereby referred to and made a part hereof, and the division having found in said supplemental report that by the payment of said allowance The Yazoo and Mississippi Valley Railroad Company violates the Interstate Commerce Act as set forth in the above-mentioned reports:

"It is Ordered, That The Yazoo and Mississippi Valley Railroad Company be, and it is hereby, notified and required to cease and desist on or before August 22, 1935, and thereafter to abstain from such unlawful practice.

"By the Commission, Division 6."

(b) No. 315 is a suit by Colin C. Bell and Wm. Tracy Alden, Trustees of the Celotex Company, Plaintiffs[2] (for brevity called Celotex Corporation), against the United States of America, Texas & New Orleans Railroad Company (for brevity called T. & N. O.), the Texas & Pacific Railway Company (for brevity called T. & P.), the Missouri Pacific Railroad Company (L. W. Baldwin and Guy A. Thompson, Trustees) (for brevity called M. P.), and the Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans (for brevity called Terminal

[2] Since the institution of the suit, the Trustees have been succeeded by the Celotex Corporation of Delaware.

Co.), with the Interstate Commerce Commission intervening.

Celotex Corporation (as did its predecessors) owns and operates a plant for the manufacture of celotex board, manufactured principally from bagasse, the dried refuse of sugar cane. The plant is located at Marrero, Louisiana. The plant is served by the three Defendant Railroads (T. & N. O., T. & P., and M. P.), the Terminal Company performing the switching for the T. & P. and the M. P.

The plant is in two sections which are separated by the tracks of the T. & N. O. and the Terminal Company. As in case No. 314, there are tracks used for the transportation of cars moving in interstate commerce between the tracks of the T. & N. O. and the tracks of the Terminal Company, upon the one hand, the place or places within the plant enclosure, where cars are loaded and unloaded, the service of such transportation being performed by Celotex Corporation (and by its predecessors), for which, first under agreements openly made, and later under tariffs, duly promulgated, an allowance was made Celotex Corporation.

The Order of the Commission of which Plaintiff complains seems to require the Defendant Railroads to cease and desist making such allowance.

(c) No. 317 is a suit by the Great Southern Lumber Company (for convenience called Lumber Company) and Bogalusa Paper Company, Incorporated (for convenience called Paper Company), Plaintiffs, against the United States of America, Gulf, Mobile and Northern Railroad Company, with the Interstate Commerce Commission intervening.

Lumber Company is engaged in the lumber and logging business, and the Paper Company in the paper manufacturing business. They together occupy a large industrial area near Bogalusa, Louisiana. Adjacent to them, but in no manner connected with them, are three other industrial plants, which are referred to for convenience as adjacent plants. As in case No. 314, there are tracks used for the transportation of cars moving in interstate commerce between the tracks of Railroad Company and the point or points where cars are loaded or unloaded by Lumber Company and Paper Company and adjacent plants. Lumber Company performs this service of transportation not under a regular tariff such as was promulgates in No. 314, but in the form of monthly lump sum reimbursements by the Railroad Company, for wages and costs of materials and supplies used in connection with such work. The Order of the Commission complained of seeks to require the Railroad to cease and desist making such lump sum monthly payments.

(d) No. 331 is a suit by the Standard Oil Company of Louisiana, Plaintiff, against the United States of America, Illinois Central Railroad Company, Yazoo & Mississippi Valley Railroad Company, Louisiana & Arkansas Railway Company, and the New Orleans, Texas & Mexico Railway Company (Baldwin and Thompson, Trustees), with the Interstate Commerce Commission intervening.

Plaintiff owns, maintains, and operates an oil refinery (one of the largest in the world) at North Baton Rouge, Louisiana. As in Case No. 314, there are tracks connecting those belonging to or used by the

Railroad Defendants with the place or places where cars are unloaded in the plant, and over which tracks cars moving in interstate commerce are transported by Plaintiff under a tariff which makes Plaintiff an allowance for such service. The Order of the Commission complained of seeks to require the Defendant Railroads to cease and desist making such allowance.

(e) No. 690 is a suit by the Humble Oil & Refining Company, Plaintiff, against the United States of America, the Texas & New Orleans Railroad Company, Missouri Pacific Railroad Company (Baldwin and Thompson, Trustees), the Beaumont, Sour Lake and Western Railway Company (Baldwin and Thompson, Trustees), Defendants, with the Interstate Commerce Commission intervening.

Plaintiff owns and operates a large oil refinery at Baytown, Texas, which, is served by the Railroad Defendants. Tracks connect numerous locations for loading and unloading cars within the Refinery property with the tracks of the Railroad Companies, over which tracks cars moving in interstate commerce are transported by Plaintiff, and for which Plaintiff is made an allowance under tariffs of the Railroads. The Order complained of required the Railroads to cease and desist making such allowance.

(f) No. 691 is a suit by the Magnolia Petroleum Company, Plaintiff, against the United States of America, the Kansas City Southern Railway Company, and the Texas & New Orleans Railroad Company, Defendants, with the Interstate Commerce Commission intervening.

Plaintiff owns and operates an oil refinery at Chaison, Texas. The Railroad

Defendants have tracks adjacent to such refinery, and there are tracks leading therefrom to the loading and unloading points within the refinery property, over which tracks cars moving in interstate commerce are transported by Plaintiff, and for which Plaintiff is made an allowance under tariffs of the Railroad Companies. The Order complained of requires the Railroads to cease and desist making such allowance.

(g) No. 692 is a suit by the Texas Company, Plaintiff, against the United States of America, the Texas & New Orleans Railroad Company, the Missouri Pacific Railroad Company (Baldwin and Thompson, Trustees), the International-Great Northern Railroad Company (Baldwin & Thompson, Trustees), the Beaumont, Sour Lake and Western Railway Company (Baldwin and Thompson, Trustees), the St. Louis, Brownsville & Mexico Railway Company (Baldwin and Thompson, Trustees), the Atchison, Topeka & Santa Fe Railway Company, the Gulf, Colorado & Santa Fe Railway Company, the Missouri-Kansas-Texas Railroad Company of Texas, and the Burlington-Rock Island Railroad Company, Defendants, with the Interstate Commerce Commission intervening.

Plaintiff owns a plant at Houston, Texas, referred to as the Galena-Signal Plant, served by the Defendant Railroads, but the Port Terminal Railroad at Houston generally performs switching services for the Railroads. Plaintiff, however, transports cars moving in interstate commerce over tracks between those of the Railroads and Terminal Company and the point within the plant where cars are loaded or unloaded, for which Plaintiff is made an allowance under

tariffs promulgated by the Railroad Defendants. The Order of the Commission complained of directs the Railroad Defendants to cease and desist making such allowance.

(h) No. 693 is a suit by the Gulf Refining Company, Plaintiff, against the United States of America, the Texas & New Orleans Railroad Company, and the Kansas City Southern Railway Company, Defendants, with the Interstate Commerce Commission intervening.

Plaintiff owns and operates a Refinery Plant at Port Arthur, Texas, which is served by the Defendant Railroads. Over tracks leading from the point or points of the loading or unloading of cars, Plaintiff transports cars moving in interstate commerce, receiving therefor an allowance under tariffs of the Railroad Defendants. The order complained of directs the Railroads to cease and desist making such allowance.

(i) No. 718 is a suit by the Texas Company, Plaintiff, against the United States of America, the Interstate Commerce Commission, the Texas & New Orleans Railroad Company, and the Kansas City Southern Railroad Company.

Plaintiff is engaged in the refining, manufacture, and sale of petroleum and its products, and owns and operates three plants, known as the Asphalt Plant at Port Neches, the Island plant, and the Refinery Plant at Port Arthur, Texas. All of the Plants are large and extensive in size, and are served by the Defendant Railroads. Over tracks connecting the point or points of loading and unloading with the tracks of the Railroad Companies, Plaintiff transports cars moving in interstate commerce, for which it receives an allowance under tariffs of the

Railroad Defendants. The Order complained of directs the Railroads to cease and desist making such allowance.

Except in No. 317, where the allowance is in the form of a monthly lump sum, the Tariff quoted in the statement in No. 314 is typical of the tariffs in the other cases, and the Order of the Commission there quoted is typical of the Order complained of in the other cases.

The Defendant Railroads, in obedience to such Orders of the Commission, undertook to cancel and discontinue the allowances set forth in such Tariffs, and these suits followed.

1. The first question is whether the work in transporting, switching and spotting cars, for which the Plaintiffs herein were paid, or were made an allowance under the Tariffs, is a service which the Railroads involved are required to perform as transportation or a part of transportation.

We think that under the evidence, the question must be affirmatively answered. We think it clear that the Railroads involved are required, under the Law, to perform such service as a part of transportation. Subdivisions 3, 4, 5 and 6, Section 1, Title 49, U. S. C. A.; *C. & O. Ry. Co.* v. *Westinghouse Co.*, 270 U. S. 265, 70 L. Ed. 576; *Mitchell Coal Co.* v. *Penna. R. R. Co.*, 230 U. S. 264, 57 L. Ed. 576; *Union Lime Co.* v. *Chicago & N. W. Ry. Co.*, 233 U. S. 217, 58 L. Ed. 924; *Los Angeles Switching Case*, 234 U. S. 310, 58 L. Ed. 1319.

There is no evidence that such Railroads are prohibited by the Plaintiffs from performing such service, nor that there are physical conditions which prevent them from doing so. Indeed, there appears to be no "abnormal conditions" of any

kind which would serve to relieve the Railroads involved of the duty. *C. & O. Ry. Co.* v. *Westinghouse, supra.*

2. Having the duty to perform the service, the Railroads involved properly and lawfully contracted with the respective Plaintiffs to perform it, and properly and lawfully made such Plaintiffs allowances, therefore, in their Tariffs. *Interstate Commerce Commission* v. *Diffenbaugh,* 222 U. S. 42, 56 L. Ed. 83; *Mitchell Coal & Coke Co.* v. *Penna. R. R. Co.,* 230 U. S. 247, 57 L. Ed. 1472; *Atchison, Topeka & Santa Fe Railway Co.* v. *U. S.,* 232 U. S. 199, 58 L. Ed. 568.

3. While the Commission without doubt has the power (Par. 1, Sec. 15, Title 49, U. S. C. A.) to determine whether such allowances are reasonable or unreasonable in amount, whether they do or do not give the Plaintiffs an unlawful preference, or whether they unlawfully discriminate against others similarly situated, etc. (*Interstate Commerce Com.* v. *Louisville & Nashville R. R. Co.,* 227 U. S. 88, 57 L. Ed. 431; *Southern Pacific Co.* v. *Interstate Commerce Com.,* 219 U. S. 433, 55 L. Ed. 283, *Interstate Commerce Com.* v. *Stickney,* 215 U. S. 98, 54 L. Ed. 112; *Interstate Commerce Com.* v. *Northern Pacific Ry. Co.,* 216 U. S. 538, 54 L. Ed. 608; *United States* v. *Baltimore & Ohio R. R. Co.,* 293 U. S. 454, 79 L. Ed. 587), we think that under the evidence here, the Commission was without power to wholly prohibit such allowances.

4. To support a cease and desist order because the rate or practice is unreasonable, preferential, discriminatory, etc., there must be the necessary jurisdictional findings of fact by the Commission.

United States v. *Chicago, Milwaukee, St. Paul and Pacific Railroad Co.*, 294 U. S. 499, 79 L. Ed. 1023; *Atchison, Topeka & Santa Fe Ry. Co.* v. *United States*, 295 U. S. 193, 79 L. Ed. 1382; *Florida* v. *United States*, 282 U. S. 194, 75 L. Ed. 291; *Southern Pacific Co.* v. *Interstate Commerce Commission*, 219 U. S. 433, 55 L. Ed. 283; *Beaumont, Sour Lake & Western Ry. Co.* v. *United States*, 282 U. S. 74, 75 L. Ed. 221. No sufficient findings appear either in the Orders themselves, or in the Reports which are made a part of the Orders.

It follows that Plaintiffs are entitled to the relief for which they pray.

Let Decree be drawn and presented accordingly, along with suggested Findings of Fact and Conclusions of Law if desired. The Court reserves the right to file Findings of Fact and Conclusions of Law in either or all the cases upon request of any party. Feb. 24, 1937:

The Clerk will file this Opinion and notify the attorneys for the respective parties.

(Sgd.) T. M. KENNERLY,
Judge.

(Endorsements:) In Equity Nos. 690, 691, 692, 693, and 718, *United States of America et al.* vs. *Humble Oil and Refining Company* and associated Cases. Statement as to Jurisdiction on Appeal. Filed 19 day of June 1937, L. C. Masterson, Clerk, by L. M. Berly, Deputy.

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